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10/812,145	03/29/2004	William Edmund Cranstoun Kentish	282568US8X	2154
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER FLANDERS, ANDREW C				
ART UNIT		PAPER NUMBER		
2615				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/812,145

Applicant(s)

KENTISH ET AL.

Examiner

ANDREW C. FLANDERS

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-42 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 8/204, 3/29/04
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Inventor's Patent Application
6) ☐ Other: _____

DETAILED ACTION

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 – 42 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1 – 26 claim a method. While this method appears to fall under one of the four statutory categories, the claims are directed to a judicial exception in the form of a computer program. This is further evidenced by claims 28 – 35 which show the method implemented in a computer software embodiment. For a judicial exception to contain statutory subject matter, the end result of the process/apparatus must include a practical application either by a physical transformation or by producing a concrete, tangible and useful result. The result of the present claims lack a practical application in the claims as well as the specification.

Claims 28 – 30 and 32 - 34 claim nothing more than a computer program. A computer program does not fall within one of the four statutory categories.

Claims 31 and 35 claim nothing more than a transmission medium. A transmission medium does not fall within one of the four statutory categories.

Claims 36 - 41 claim an apparatus. While this apparatus appears to fall under one of the four statutory categories, the claims are directed to a judicial exception in the form of a computer program. This is further evidenced by claims 28 – 35 which show the apparatus implemented in a computer software embodiment. For a judicial exception to contain statutory subject matter, the end result of the process/apparatus must include a practical application either by a physical transformation or by producing a concrete, tangible and useful result. The result of the present claims lack a practical application in the claims as well as the specification.

Claim 42 claims a data structure in the form of audio data. A data structure does not fall within one of the four statutory categories.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 3, 5 – 7, 11 – 13, 15 – 27, 36 – 39, 41 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Taro (EP 1 189 362 A2).

Regarding **Claim 1**, Taro discloses:

A method of processing a spectrally-encoded digital audio signal (title and abstract) comprising band data components representing audio contributions in respective frequency bands (separating the audio data with frequency band separator 401; para 78), said method comprising the steps of:

altering a subset comprising one or more of said band data components to produce a band-altered digital audio signal having altered band data components (embedding various keys within the frequency bands; see second embodiment); and
generating recovery data to allow original values of said altered band data components to be reconstructed (i.e. the generation of the keys used in decryption/ or reading the keys out from storage; second embodiment).

Regarding **Claim 2**, in addition to the elements disclosed above regarding claim 1, Taro further discloses:

comprising the step of encrypting said recovery data (i.e encryption using the keys; second embodiment).

Regarding **Claim 3**, in addition to the elements disclosed above regarding claim 1, Taro further discloses:

in which said recovery data comprises said subset of said band data components (i.e. the keys are embedded into the band data and are integral; second embodiment).

Regarding **Claim 5**, in addition to the elements disclosed above regarding claim 1, Taro further discloses:

in which said altering step comprises combining one or more of said band data components with corresponding band data components from a spectrally-encoded digital audio watermark signal (i.e. combining the various signal components to produce a single compressed and encrypted audio signal; para 83).

Regarding **Claim 6**, in addition to the elements disclosed above regarding claim 1, Taro further discloses:

in which said subset of said band data components is a predetermined subset of said band data components (i.e. telephone voice band, low and high frequency band; embodiment 2).

Regarding **Claim 7**, in addition to the elements disclosed above regarding claim 1, Taro further discloses:

in which said recovery data defines which of said band data components are in said subset of said band data components (i.e. certain keys are embedded into certain bands; embodiment 2).

Regarding **Claim 11**, in addition to the elements disclosed above regarding claim 5, Taro further discloses:

detecting which of said band data components of said watermark signal are most significant over at least a portion of said watermark signal (i.e. the system determines the least significant bit, during this determination it must also determine the most significant bit in order to accurately identify the LSB; para 82)., said most significant band data components forming said subset of said band data components (these bits are part of the sub band components of the signal; embodiment 2).

Regarding **Claim 12**, in addition to the elements disclosed above regarding claim 11, Taro further discloses:

in which said detecting step comprises detecting which of said band data components of said watermark signal are most significant over the entirety of said watermark signal (i.e. the system determines the least significant bit, during this determination it must also determine the most significant bit in order to accurately identify the LSB; para 82).

Regarding **Claim 13**, in addition to the elements disclosed above regarding claim 11, Taro further discloses:

in which said watermark signal and said digital audio signal are each encoded as successive data frames representing respective time periods of said watermark signal and said digital audio signal (i.e. the frequency encoded signal represents a time domain signal encoded in a format that sets successive bands respectively) said detecting step comprising:

detecting which of said band data components of said watermark signal are most significant over a group of one or more of said data frames of said watermark signal, said most significant band data components forming said subset of said band data components in respect of a corresponding group of one or more frames of said digital audio signal (i.e. the system determines the least significant bit, during this determination it must also determine the most significant bit in order to accurately identify the LSB; para 82).

Regarding **Claim 15**, in addition to the elements disclosed above regarding claim 5, Taro further discloses:

comprising the step of detecting which of said band data components of said watermark signal differ most significantly from corresponding band data components of said digital audio signal over at least corresponding portions of said watermark signal and said digital audio signal(i.e. the system determines the least significant bit, during this determination it must also determine the most significant bit in order to accurately identify the LSB; para 82)., said most significantly differing band data components forming said subset of said band data components (these most and least significant portions all make up the band data components; i.e. subbands produced by the frequency separation; embodiment 2).

Regarding **Claim 16**, in addition to the elements disclosed above regarding claim 5, Taro further discloses:

in which said band data components forming said subset of said band data components are defined by a pseudo-random function (Taro discloses using MP3 or AAC encoding, both of which employ pseudo-random functionality).

Regarding **Claim 17**, in addition to the elements disclosed above regarding claim 1, Taro further discloses:

in which said digital audio signal is stored (storing the resultant encrypted audio) in a data format having at least:

format-defining data specifying a quantity of data available to store said digital audio signal (AAC or MP3);

said band data components (frequency encoded audio; mp3 or AAC); and
zero or more ancillary data space (key data stored in frequency bands; inaudible area).

Regarding **Claim 18**, in addition to the elements disclosed above regarding claim 17, Taro further discloses:

comprising the step of storing said recovery data in said ancillary data space (i.e. key data stored in the frequency bands in inaudible portions).

Regarding **Claim 19**, in addition to the elements disclosed above regarding claim 17, Taro further discloses:

comprising the step of altering said format-defining data to specify a larger quantity of data to store said digital audio signal, thereby increasing the size of said ancillary data space (i.e. MP3 and AAC can have their characteristics changed to enable larger storage, more bits or less depending on user preferences. alteration would allow for more frequency bands and thus more ancillary data space).

Regarding **Claim 20**, in addition to the elements disclosed above regarding claim 1, Taro further discloses:

comprising the step of appending said recovery data to said band-altered digital audio signal (i.e. embedding keys into the sub bands; embodiment 2).

Regarding **Claim 21**, in addition to the elements disclosed above regarding claim 1, Taro further discloses:

comprising the step of adjusting the number of said band data components in said subset of said band data components in accordance with the data capacity available for said recovery data (i.e. band filtering using minimum or maximum frequency band components; col. 12 embodiment 2).

Regarding **Claim 24**, in addition to the elements disclosed above regarding claim 1, Taro further discloses:

A method of distributing spectrally-encoded audio content material, said method comprising the steps of:

processing said spectrally-encoded audio content material in accordance with the method of claim 1 to form a band-altered digital signal and recovery data (see rejection of claim 1 above);

encrypting said recovery data to form encrypted recovery data (i.e. encrypting the bands with embedded keys; embodiment 2);

supplying said band-altered digital signal and said encrypted recovery data to a receiving user (sending the encrypted data to an audio player; embodiment 2); and

supplying a decryption key to said receiving user to allow said receiving user to decrypt said encrypted recovery data (i.e. the encrypted audio data includes various keys; embodiment 2).

Regarding **Claim 25**, in addition to the elements stated above regarding claim 24, Taro further discloses:

in which said supplying step takes place only if a payment is received from said receiving user (i.e. content provider an urge the user to pay a fee for the music; page 9).

Regarding **Claim 26** in addition to the elements stated above Taro further discloses:

A method of receiving spectrally-encoded audio content material, said method comprising the steps of:

receiving a band-altered digital signal and encrypted recovery data from a content provider, said band-altered digital signal and said recovery data having been

generated by altering a subset comprising one or more of said band data components to produce a band-altered digital audio signal having altered band data components; and generating recovery data to allow original values of said altered band data components to be reconstructed (See rejection of claim 1);

receiving a decryption key to allow decryption of said encrypted recovery data (i.e. the keys which are embedded are sent to the audio player; embodiment 2);

decrypting said encrypted recovery data to form decrypted recovery data (using the keys to decrypt the audio data; embodiment 2);

processing said band-altered digital signal by altering said subset of said band data components in accordance with said recovery data to reconstruct said original values of said subset of said band data components (decoding the received encrypted signal for playback; embodiment 2).

Regarding **Claim 27**, in addition to the elements stated above regarding claim 26, Taro further discloses:

Providing a payment to said content provider (i.e. content provider an urge the user to pay a fee for the music; page 9).

Claims 22 – 23, 36 – 39, 41 and 42 claim the same limitations as the claims above and are rejected under the same grounds.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 8 – 10, 14, 28 – 35 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taro.

Regarding **Claim 4**, in addition to the elements disclosed above regarding claim 1, Taro further discloses:

in which said altering step comprises replacing one or more of said band data components by corresponding band data components from a spectrally-encoded digital audio watermark signal (i.e. embedding the keys, as watermarks, into one of the bands; embodiment 2).

Taro fails to explicitly disclose that the audio watermark signal is multiplied by a scaling factor. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to multiply the watermark signal by a scale factor. Taro recognizes that it is desirable to ensure the signal is inaudible and scaling the signal would ensure this was achieved. Scaling the signal would not alter the output so long as the scale factor was chosen such that the signal was still recoverable during restoration.

Regarding **Claim 8**, in addition to the elements disclosed above regarding claim 4, Taro further discloses:

detecting which of said band data components of said watermark signal are most significant over at least a portion of said watermark signal (i.e. the system determines the least significant bit, during this determination it must also determine the most significant bit in order to accurately identify the LSB; para 82), said most significant band data components forming said subset of said band data components (these most and least significant portions all make up the band data components; i.e. subbands produced by the frequency separation; embodiment 2).

Regarding **Claim 9**, in addition to the elements disclosed above regarding claim 8, Taro further discloses:

in which said detecting step comprises detecting which of said band data components of said watermark signal are most significant over the entirety of said watermark signal (to determine the LSB and MSB, the entirety of the signal must be analyzed).

Regarding **Claim 10**, in addition to the elements disclosed above regarding claim 8, Taro further discloses:

in which said watermark signal and said digital audio signal are each encoded as successive data frames representing respective time periods of said watermark signal

and said digital audio signal (i.e. the frequency encoded signal represents a time domain signal encoded in a format that sets successive bands respectively) said detecting step comprising:

detecting which of said band data components of said watermark signal are most significant over a group of one or more of said data frames of said watermark signal, said most significant band data components forming said subset of said band data components in respect of a corresponding group of one or more frames of said digital audio signal (i.e. the system determines the least significant bit, during this determination it must also determine the most significant bit in order to accurately identify the LSB; para 82).

Regarding **Claim 14**, in addition to the elements disclosed above regarding claim 11, Taro further discloses:

comprising the step of detecting which of said band data components of said watermark signal differ most significantly from corresponding band data components of said digital audio signal over at least corresponding portions of said watermark signal and said digital audio signal (i.e. the system determines the least significant bit, during this determination it must also determine the most significant bit in order to accurately identify the LSB; para 82)., said most significantly differing band data components forming said subset of said band data components (these most and least significant portions all make up the band data components; i.e. subbands produced by the frequency separation; embodiment 2).

Regarding **Claims 28 – 35**, Claims 28 - 35 claim various forms of software for performing the above methods. Taro does not explicitly disclose software for performing the functions but they are extremely obvious if not inherently present. Taro discloses various computer related modules and also discloses compressing audio data. Audio compression is typically done using software in the art. While it can be done in other ways, software provides the cheapest and easiest implementation. It would have been obvious to one of ordinary skill in the art at the time of the invention to implement the system using software. Its cheap and easy implementation would be desirable in the system.

Regarding **Claim 40**, in addition to the elements disclosed above regarding claim 38, Taro fails to explicitly disclose using a set top box. However, set top boxes are notoriously well known to include audio and pay per view events in the cable television art. IT would be desirable to implement the features of Taro to a typical set to box to prevent piracy in a pay per view television event.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW C. FLANDERS whose telephone number is (571)272-7516. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571) 272-7546. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Acf/

/Sinh N Tran/
Supervisory Patent Examiner, Art Unit 2615